

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ricardo Fishbourne, # 279661,)	
)	C/A No.: 2:07-0834-MBS
Petitioner,)	
)	
vs.)	
)	O R D E R
Warden Robert N. Stevenson,)	
)	
Respondent.)	
_____)	

On March 30, 2007, Petitioner Ricardo Fishbourne filed a petition under 28 U.S.C. § 2254 for a writ of habeas corpus. Petitioner asserts as grounds for relief (1) violation of due process, (2) ineffective assistance of trial counsel, (3) miscarriage of justice and abuse of discretion by trial judge.

This matter is before the court on Respondent's motion for summary judgment, which motion was filed June 28, 2007. By order filed July 2, 2007, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the applicable procedures and the possible consequences if he failed to respond adequately. Petitioner filed no response to Respondent's motion. On August 8, 2007, Petitioner was granted an additional ten days to file his response to Respondent's motion for summary judgment. Petitioner was advised that if he failed to respond, this action could be dismissed for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Petitioner filed no response to the August 8, 2007 order.

In accordance with 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. On August 27, 2007, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be dismissed pursuant to Fed. R. Civ. P. 41(b). Petitioner filed no objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. The case is dismissed with prejudice pursuant to Fed R. Civ. P. 41(b).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

September 26, 2007

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.